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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,668	10/17/2003	Gregg L. Shedy	TN-3305	2621
7590	11/07/2008		EXAMINER	
Black & Decker Inc. 701 E. Joppa Road, TW-199 Towson, MD 21286			LEE, LAURA MICHELLE	
			ART UNIT	PAPER NUMBER
			3724	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/688,668	SHEDDY ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	LAURA M. LEE	3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 8/06/2008.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-5, 66-69 and 71 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 66-69 is/are allowed.

6) Claim(s) 1-5, 71 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments, see page 10 of 12, filed 8/06/2008, with respect to claims 67-69 have been fully considered and are persuasive. The rejection of 67-69 has been withdrawn.

Applicant's arguments with respect to claims 1-5 and 71 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Elder (U.S. Patent 3,302,669). Elder discloses a saw comprising: a base(20); a frame assembly (80) disposed on the base; a first rail (52) disposed on the frame assembly, the first rail having a longitudinal axis; a saw assembly(314) disposed on at least one of the base(20) and the frame assembly (80), the saw assembly (314) comprising a support assembly(250), a motor assembly (310a) pivotally supported by the support assembly, the support assembly (250) remaining stationary relative to pivotal movement (bevel angle adjustment) of the motor assembly(310a) and the motor assembly being

pivotal (bevel angle movement) about a pivot axis substantially parallel to the longitudinal axis, and a cutting wheel (314) driven by the motor assembly, the cutting wheel having a plane substantially parallel to the pivot axis; a table (51) slidably disposed on the first rail (52) so as to be movable relative to the saw assembly in a direction substantially parallel to the longitudinal axis; and a switch (261) electrically connected to the motor assembly (310a) and disposed on the support assembly above the table and proximate to the motor assembly so that, when the motor assembly is pivoted about the pivot axis, the support assembly and the switch remain stationary relative to the pivotal movement of the motor assembly.

The saw is capable of being positioned so that the plane of the blade is parallel with the rail in a rip cutting setup. Furthermore, the saw can then be adjusted to alternative bevel angles, such that the rail, table, and pivot axis are all in the same direction and the support assembly and switch are stationary while the saw is adjusted (see col. 9, lines 24-40).

In regards to claim 2, Elder discloses wherein the first rail (52) has a first end, and the table (51) is movable beyond the first end (see Figure 1).

In regards to claim 3, Elder discloses wherein the table (51) is movable beyond the base (20).

In regards to claim 4, Elder discloses wherein the base (20) is formed as a tub (bottom 26 and walls 28, see Figure 8).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-5 and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miyamoto (U.S. Patent 4,958,544) in view of Hallenbeck (U.S. Patent 5,016,508). Miyamoto disclose a saw (radial saw) comprising a base (i.e. a stand not shown);

a frame assembly (401) disposed on the base;

a saw assembly (500) disposed on at least one of the base and the frame assembly, the saw assembly comprising a support assembly (100), a motor assembly (515) pivotably supported by the support assembly (100), the support assembly remaining stationary relative to pivotal movement (bevel adjustment) of the motor assembly (515) and the motor assembly being pivotable about a pivot axis substantially parallel to the longitudinal axis, and a cutting wheel (529) driven by the motor assembly, the cutting wheel having a plane substantially parallel to the pivot axis;

and a switch (on-off switch, 730) electrically connected to the motor assembly and disposed on the support assembly (100) above the table and proximate to the motor assembly so that, when the motor assembly is pivoted about the pivot axis, the support assembly (100) and the switch (730) remain stationary relative to the pivotal movement of the motor assembly.

Miyamoto does not disclose a first rail disposed on the frame assembly, the first rail having a longitudinal axis and a table slidingly disposed on the first rail so as to be movable relative to the saw assembly in a direction substantially parallel to the longitudinal axis. However, attention is directed to the Hallenbeck reference that discloses a miter gauge assembly adaptable for use with a table saw as well as a radial arm saw assembly. Hallenbeck discloses providing a rail (14) in the table surface (or frame assembly) which mates with a corresponding elongated protrusion (22) on the table. Although, Hallenbeck discloses the use of the miter gauge with a radial arm saw, no embodiment is provided in conjunction with the radial saw. However, one having ordinary skill in the art would recognize that by a similar modification to the radial arm saw, as contemplated by Hallenbeck, that the Miyamoto saw could also benefit from the advantages of the miter gauge for performing guided miter cuts with the radial arm saw.

In regards to claim 2, the modified device of Miyamoto discloses wherein the first rail (Hallenbeck 14) has a first end, and the table (Hallenbeck 20) is movable beyond the first end.

In regards to claim 3, the modified device of Miyamoto discloses wherein the table (Hallenbeck, 20) is movable beyond the base (stand, not shown).

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Elder. Elder is silent as to the material of the frame and therefore does not disclose that the frame is made of aluminum. However, it is old and well known to create supports from aluminum as aluminum is a strong and cheaply processed material. It would have been

obvious to one having ordinary skill in the art at the time the invention was made to construct the Elder frame from aluminum, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

7. Claim 71 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miyamoto (U.S. Patent 4,958,544) in view of Hallenbeck (U.S. Patent 5,016,508) and in further view of Karubian (U.S. Patent 3,703,654). The modified device of Miyamoto does not disclose that the switch (730) comprises a single throw, double pole switch. However, attention is directed to the Karubian saw, that discloses a single throw, double pole switch for use on a saw. It would have been obvious to one having ordinary skill in the art to modify the switch of Miyamoto to be a single throw, double pole switch as taught by Karubian as the saw of Miyamoto would have benefited in the same way as shown by Karubian.

#### ***Allowable Subject Matter***

8. Claims 67-69 are allowed.

#### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent 4,077,290 to Hreha.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LAURA M. LEE whose telephone number is (571)272-8339. The examiner can normally be reached on Monday through Friday, 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Laura M Lee/  
Examiner, Art Unit 3724  
10/28/2008  
/Boyer D. Ashley/  
Supervisory Patent Examiner, Art Unit 3724